

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)
Plaintiff,)
vs.) 4:05-CV-00329-TCK-SAJ
TYSON FOODS, INC., et al,)
Defendants.)

THE VIDEOTAPED DEPOSITION OF

PRESTON KELLER, produced as a witness on behalf of

the Plaintiff in the above styled and numbered

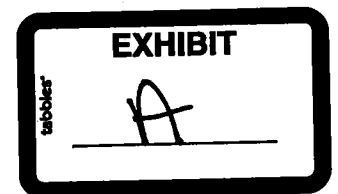
cause, taken on the 15th day of October, 2008, in

the City of Fayetteville, County of Washington,

State of Arkansas, before me, Lisa A. Steinmeyer, a

Certified Shorthand Reporter, duly certified under

and by virtue of the laws of the State of Oklahoma.



1 1989?

2 A I think I did. Yes, I did. It was a two-year
3 college, yes.

4 Q All right, and did you obtain then a degree
5 there in that two-year college?

09:08AM

6 A Not at that time I didn't.

7 Q That was your area of study though,
8 agriculture?

9 A Yes, it was.

10 Q You attended the University of Arkansas from
11 1997 to 1999; is that correct?

09:08AM

12 A That's correct.

13 Q And did you obtain a degree from the
14 University of Arkansas?

15 A Yes, I did.

09:08AM

16 Q And what is that degree?

17 A Environmental soil and water science.

18 Q Have you attended any other types of graduate
19 college work?

20 A I have not.

09:09AM

21 Q Have you accomplished any certifications in
22 any areas that might be commensurate with your work
23 at Tyson?

24 A I think it's no longer a certification, but I
25 had a certification to write nutrient management

09:09AM

1 plans for the state of Arkansas and I had the
2 national certification also.

3 Q What periods of time did you hold the
4 certification to write nutrient management plans?

5 A I currently still hold the one for the state 09:09AM
6 of Arkansas, and I really don't know when it
7 expired. It was in '03 that I gained certification.

8 Q You gained the certification in Arkansas in
9 '03?

10 A No. I gained the one in Arkansas last year. 09:10AM

11 Q So you were first certified last year, that
12 being 2007?

13 A In the state of Arkansas, yes.

14 Q You were not certified as a nutrient
15 management plan writer before that time? 09:10AM

16 A Not in Arkansas.

17 Q Were you certified any other place before 2007
18 as a nutrient management plan writer?

19 A There was a national certification.

20 Q All right, and that certification was obtained 09:10AM
21 in 2003; is that what I understand you to say?

22 A Yes.

23 Q And how is that certification different than
24 the one in the state of Arkansas?

25 A It was a general certification based off the 09:10AM

1 federal CAFO regulations. It did not have
2 state-specific requirements in it. You had to go
3 beyond that to be certified in each state.

4 Q Did you obtain that certification as a result
5 of your job duties with Tyson?

09:10AM

6 A They paid for it I guess if that's what you're
7 asking. I requested to go to the training.

8 Q Okay, and did you tell me that license or that
9 certification is now expired?

10 A I think it was only good for a year. I'm
11 pretty sure it was.

09:11AM

12 Q Okay. So you didn't do anything to renew it
13 after the 2003 period that you obtained it?

14 A No.

15 Q Did you do an internship with Tyson Foods?

09:11AM

16 A Yes, I did.

17 Q What was the period of time that you did that?

18 A I think it was in '98.

19 Q How much time -- what was the length of that
20 internship?

09:11AM

21 A I think it was the summer of my '98 school
22 year.

23 Q So while you're attending the University of
24 Arkansas, you interned with Tyson Foods; is that
25 right?

09:11AM

1 A Yes.

2 Q Prior to Aexiom, and it's A-E-X-I-O-M; is that
3 correct?

4 A Yes.

5 Q Prior to working for them, where did you work? 09:14AM

6 A I worked in -- I was in the Service, in the U.
7 S. Navy.

8 Q Okay. How long was your tour in the Navy?

9 A Four years.

10 Q And were you honorably discharged from that 09:14AM
11 service?

12 A Yes, I was.

13 Q Let's go back then to when you were first
14 employed not as an intern but first employed with
15 Tyson Foods. What was your title or describe your 09:14AM
16 duties and responsibilities there?

17 A Nutrient management specialist.

18 Q Tell the court what that entails.

19 A We did primarily education nationwide for the
20 growers. Developed training for the complexes so 09:15AM
21 they could do their training during their grower
22 meetings.

23 Q Is that the sole extent of your duties is a
24 nutrient management specialist?

25 A Pretty much. I mean, that's a broad statement 09:15AM

1 but, yeah, that's --

2 Q So you were first employed by Tyson in 1999?

3 A Yes.

4 Q Okay, and so at that time you had not yet

5 obtained any certification as a nutrient plan

09:16AM

6 writer, had you?

7 A No, I hadn't.

8 Q So did you travel nationwide in providing this

9 primary education to growers?

10 A Yes.

09:16AM

11 Q Tell me what it was that you provided. What

12 was the subject matter of education that you were

13 providing for the growers?

14 A Whatever the local or state regulations were,

15 what federal regulations were. We work with local

09:16AM

16 government agencies, Natural Resource Conservation

17 Service, extension services for them to do whatever

18 their expertise trainings were. They would do -- we

19 facilitated primarily the trainings and they did a

20 lot of whatever their expertise were, whether it was

09:16AM

21 soil management or whatever it was.

22 Q Was your duties then directly connected to the

23 growers or did you train others to then train the

24 growers?

25 A We did training with our people also because

09:17AM

1 Q Let me ask it this way: Are there others
2 besides Randy Young that you may have worked with at
3 ANRC in order to gain the information necessary to
4 conduct classes for growers and service techs?

5 A Yes.

09:19AM

6 Q All right. How long were you a nutrient
7 management specialist then at Tyson?

8 A Approximately two years.

9 Q What were your duties, title or other
10 responsibilities after being a nutrient management
11 specialist?

09:19AM

12 A I think at that point I went to a regional
13 director of environmental, and that had to do with
14 plant environmental issues, wastewater. I still
15 dealt with the nutrient management responsibilities.
16 I mean, that has hazardous waste in it. We had PSM.

09:20AM

17 Q I'm sorry, you had what?

18 A PSM, ammonia systems, safety and issues around
19 that.

20 Q How long were you in the position of regional
21 director of environment?

09:20AM

22 A I think a year.

23 Q I thought you mentioned something before. You
24 said wastewater. Was there some other, besides
25 wastewater, nutrient management responsibilities,

09:21AM

1 A It was -- I'm pretty sure at that point is
2 when we purchased IBP. I was director of
3 environmental agriculture.

4 Q Tell me the title again. Director of
5 environmental what?

09:26AM

6 A Director of environmental agriculture.

7 Q And how long did you remain in that position?

8 A Until I resigned.

9 Q And date of resignation?

10 A January 31st of '05.

09:26AM

11 Q And what was the reason for your resignation?

12 A Just to pursue other opportunities. We bought
13 an RV business at that time.

14 Q When you say we, who are you talking about?

15 A Me and my wife.

09:26AM

16 Q Okay. So you went into the RV business for a
17 while?

18 A Yes.

19 Q And what did you do after that?

20 A We sold out of that, and that's what we're
21 doing currently today, the cattle and sawmill.

09:26AM

22 Q All right. Let's talk then about your duties
23 and responsibilities as director of environmental
24 ag. Let me think. You were in that position for
25 how long; since about '01?

09:27AM

1 A Yes, somewhere in there.

2 Q All right, and what were your duties and
3 responsibilities as director of environmental ag?

4 A We facilitated education as far as our

5 personnel. We had growers on environmental

09:27AM

6 regulations that -- we oversaw any environmental

7 issues on the pork side at that point and also the

8 beef. We purchased IBP. Also had IBP's sludge

9 application.

10 Q So you were responsible for IBP's obtaining

09:28AM

11 permits as necessary for its sludge removal and

12 spreading?

13 A Yes.

14 Q Is that correct?

15 A That's correct.

09:28AM

16 Q And you had duties over the pork environmental

17 issues; is that what I understand you to say?

18 A That's correct.

19 Q What duties did you have relating to poultry

20 operations?

09:28AM

21 A We facilitate -- same thing. We facilitated

22 growers' education. I think in '01 we still had

23 some company-owned farms. We ensured that we met

24 all environmental regulations on those, and at that

25 point there were a lot of state regulations being

09:28AM

1 promulgated. We ensured we were part of that in
2 developing state and federal regulations.

3 Q Who did you report to as the regional director
4 of ag, agriculture?

5 A Jimmy Mardis for a period and then -- I can't 09:29AM
6 even think. This is how names slip my mind. The
7 current chief of environment right now. I can't
8 think. I'm sorry, but that's how names slip my
9 mind.

10 Q Steve Patrick? 09:29AM

11 A No. For a short period I answered to Steve
12 Patrick.

13 Q Is there a Jamie Burr?

14 A No. He worked for me.

15 Q Okay. So Jamie Burr was below you? 09:29AM

16 A Yes.

17 Q A Kevin Igli?

18 A Kevin Igli. Thank you.

19 Q And how long did you report to Mr. Mardis?

20 A From the point I was no longer working for Les 09:30AM
21 Havens to probably my last year of employment at
22 Tyson Food, so '04, somewhere.

23 Q So then in the last year of your employment,
24 you would have reported for a short time to Steve
25 Patrick and then Kevin Igli? 09:30AM

1 A Yes.

2 Q So Kevin Igli was the last person you had
3 responsibilities to report to when you left in '05?

4 A I think actually Steve Patrick was the last
5 one. They were taking -- at that point they were
6 going into EH&S, and they were changing
7 organizations I think on a daily basis.

09:30AM

8 Q So how long did you report to Kevin Igli?

9 A Probably nine months out of the last year.

10 Q All right, and then three months or so to Mr.
11 Patrick before you leave?

09:31AM

12 A Yes.

13 Q Okay. As a director of environmental ag, did
14 you have a geographic scope of responsibility as
15 part of your duties?

09:31AM

16 A The whole company.

17 Q Whole company?

18 A Yes.

19 Q When you left in 2005, did you assist in
20 training a person to replace you in your position?

09:31AM

21 A No, I did not.

22 Q Do you know who replaced you at your position
23 after you left?

24 A I think Jamie Burr did.

25 Q Jamie Burr?

09:32AM

1 Q Did you in any of the positions with Tyson,
2 other than your intern position, subscribe to any
3 particular publications or literature in order to
4 keep you abreast of issues relating to environmental
5 concerns with poultry growing operations?

09:45AM

6 MR. BOND: Object to the form.

7 A I can't remember. I don't remember whether we
8 had publications or -- we were constantly reading
9 material, so --

10 Q What would be the source of materials that you
11 would be constantly reading?

09:46AM

12 A University research, state and federal
13 agencies' publications.

14 Q And is the university research that you were
15 reviewing, is it limited to the University of
16 Arkansas or would it be other universities in
17 addition to that?

09:46AM

18 A Other universities in addition.

19 Q Okay. Can you give me an example of some
20 universities that you recall reading materials
21 involving poultry environmental concerns?

09:46AM

22 A I know the University of Maryland did a lot of
23 research. OSU did some, Oklahoma State University
24 did some. University of Alabama did some.

25 University of Georgia did some. University of Iowa

09:47AM

1 poultry environmental issues?

2 MR. BOND: Object to the form.

3 A Extension service and NRCS would come in at
4 times and do training for the environmental group.

5 Q What I'm trying to make sure, my questions are 09:49AM
6 now with regard to the training and education the
7 environmental group would receive. Limiting that to
8 the poultry operations and environmental issues, did
9 these training sessions that occurred twice a year
10 involve the poultry grow-out operations and the 09:49AM
11 environmental concerns involving them?

12 MR. BOND: Object to the form.

13 A Are you talking about the growers, the --

14 Q No, no. I'm talking about when your
15 environmental group was being trained and educated 09:49AM
16 twice a year --

17 A Okay.

18 Q -- did some of the subject, some of the
19 materials that were provided to you, was it dealing
20 with the poultry grow-out operations and 09:49AM
21 environmental concerns?

22 A Environmental concerns on the poultry grow-out
23 side, yes.

24 Q That's my point. It's not just limited to
25 wastewater or plants? 09:50AM

1 supported to haul poultry waste out of the Delmarva
2 region because of the issues at Chesapeake Bay?

3 A I don't remember any.

4 Q You were not involved in any yourself
5 particularly; is that true?

10:52AM

6 MR. BOND: Object to the form.

7 A I don't remember any.

8 Q You could have been then; you just don't
9 remember?

10 MR. BOND: Object to the form.

10:52AM

11 A I don't remember.

12 Q Let me hand you what's been marked as Exhibit
13 31 and ask you to look at that and tell me whether
14 or not you identify or recognize this document.

15 A I hope I didn't put it out with Tysons upside
16 down.

10:53AM

17 MR. BOND: And backwards.

18 A And backwards.

19 Q Do you recognize Exhibit 31? This is a
20 document produced by Tyson to the State of Oklahoma.

10:53AM

21 A It looks like a training program that we had.

22 Q Do you know what time frame this training
23 program would have been used?

24 A I don't.

25 Q Do you know what time frame was -- let me ask

10:53AM

1 you, did you prepare these slides that are shown in
2 Exhibit 30 -- 31?

3 A It looks like a presentation I probably did.

4 Q Did you prepare the slides?

5 A I don't remember.

10:54AM

6 Q Do you remember when it was that these slides
7 would have been prepared?

8 A I don't remember a date. I sure don't.

9 Q If you didn't prepare them, who would have
10 prepared them?

10:54AM

11 A Been me or Paul Harriston probably.

12 Q Okay. Your name appears on what appears to be
13 the first slide in the upper left-hand corner of
14 Exhibit 31, does it not?

15 A Yes, it does.

10:54AM

16 Q All right, and do you recall who you would
17 have presented this program to?

18 A I'd say either contract growers or live
19 production personnel.

20 Q At the time that you came to Tyson, was there
21 a Tyson environmental poultry farm management manual
22 in place used by contract growers?

10:54AM

23 A I think there was. I'm trying to remember
24 when it was written.

25 Q All right. Looking at the -- what would be

10:55AM

1 the third slide or the one in the lower left-hand
2 corner it says under the heading, past. Do you see
3 that slide?

4 A Yes.

5 Q It says, the soil could infinitely fix 10:55AM
6 phosphorus. What do you mean by infinitely fix
7 phosphorus?

8 A For a lot of years the state and federal
9 governments and the university researches showed
10 that soils could bind up all phosphorus that was 10:56AM
11 applied on soils. It was actually when I went to
12 school, and the -- and they taught that to contract
13 growers. So as research showed differently, then we
14 had to educate that it had changed.

15 Q So based upon that statement, do you know 10:56AM
16 approximately when this presentation would have been
17 prepared?

18 A During my employment at Tyson Foods.

19 Q Okay, and you would have prepared it based
20 upon what source materials? 10:56AM

21 A All the university researches that we read.

22 Q All right, and would those have been kept
23 within Tyson's possession and control and available
24 to you?

25 A We primarily got most of it off publications 10:56AM

1 presentation, didn't you?

2 A I did.

3 Q All right, but the term is actually fixation
4 if you read a soils manual instructing people about
5 soils or quality and that sort of thing; correct?

10:59AM

6 A We weren't instructing. I don't remember
7 exactly what I was trying to put fixation.

8 Q All right. Do you remember, sir, your
9 instructions, though, in taking soil classes that
10 fixation is not a 100 percent principle but it's
11 lesser than 100 percent as it deals with phosphorus?

10:59AM

12 MR. BOND: Object to the form.

13 A I think early classes at Arkansas State it
14 was. They would fix it, and that was early on, and
15 then later when we went to U of A, it was -- it was
16 -- different parameters within the soil changed the
17 fixation of it.

10:59AM

18 Q So the fixation of phosphorus was not a 100
19 percent phenomenon; would you agree with that?

20 A I would agree with that.

11:00AM

21 Q And your next slide it says present. Do you
22 see that? It says, phosphorus is mobile, causes
23 water quality problems and accumulates in the soil.
24 Did you write that?

25 A Yes.

11:00AM

1 Q Were you making those statements in your
2 capacity as a director or regional director for
3 environmental agriculture?

4 A Those were speaking points is what those were,
5 and we were training off of those points.

11:00AM

6 Q Okay. So at that time when it talks about the
7 present, did you believe those statements were true
8 in this -- when you made this presentation to the
9 growers or live production?

10 MR. BOND: Object to the form.

11:00AM

11 A It is mobile based off the management
12 practices that are put forth on individual farms,
13 and it only causes water quality problems if it's
14 mismanaged.

15 Q So you're saying only if phosphorus is
16 mismanaged, it causes water quality problems;
17 correct?

11:01AM

18 A That's correct.

19 Q All right, and what would you define as being
20 mismanaged?

11:01AM

21 MR. BOND: Preston, you have take your
22 hand.

23 A Sorry. I'm sorry. Re --

24 Q What do you define as mismanaged when you
25 refer to mismanagement of phosphorus causing water

11:01AM

1 quality problems?

2 A Over application.

3 Q All right. Is there any other types of
4 mismanagement besides over application?

5 A I guess you can stack it outside and not cover 11:01AM
6 it, not burn it. That's the only off the top of my
7 head.

8 Q So when you say phosphorus is mobile and
9 causes water quality problems, how does that occur?

10 A When it's over applied, even commercial 11:01AM
11 fertilizer when it's over applied, it runs off.

12 Q And so when you use the term in your
13 presentation as mobile, is that referring to a
14 chemical aspect of it or physical aspect of it when
15 you use this term in your presentation? 11:02AM

16 MR. BOND: Object to the form.

17 A Probably both.

18 Q Okay. Let's turn to the next page of this
19 Exhibit No. 31 and the slide that continues there
20 under the word present continued and second bullet 11:02AM
21 point says, pressure for regulations in Arkansas.
22 What did you mean by that in this slide; what were
23 you referring to?

24 A I recollect -- I'd say it probably had to do
25 with the lawsuits going on in different watersheds. 11:03AM

1 Q All right. In the next slide it says,
2 proactive approach, and one of the bullet points
3 says, take the extra steps to minimize the
4 environmental impact of litter disposal; do you see
5 that?

11:05AM

6 A Where?

7 Q In the -- what would be the third slide, lower
8 left-hand corner, second bullet point under
9 proactive approach.

10 A Yes.

11:05AM

11 Q You wrote that, did you not?

12 A I would assume I did, yes.

13 Q And when you use the term litter disposal, did
14 you mean land application of poultry waste or litter
15 at that time?

11:05AM

16 A That was probably part of that, yes.

17 Q One of the environmental impacts of poultry
18 litter disposal is phosphorus-related water quality
19 problems, is it not?

20 A Restate the question.

11:05AM

21 Q One of the environmental impacts of poultry
22 litter disposal is phosphorus-related water quality
23 problems; correct?

24 MR. BOND: Object to the form.

25 A If it's mismanaged, yes.

11:05AM

1 A Yes, it did that -- I don't know if that is
2 but I know the checksheet did that we had.

3 Q So the checksheet -- you use the term
4 checksheet, but this says checklist, so --

5 A I'm sorry. Annual checklist. I'll make sure 11:18AM
6 I use the terms.

7 Q That's the same --

8 A Same form we're talking about, yes.

9 Q Correct, all right, and that's what populated
10 the nutrient management spreadsheet that we see in 11:18AM
11 the lower left-hand corner of this Exhibit 31?

12 A That's correct.

13 Q Okay. Let me hand you now what's marked as
14 Exhibit No. 3 and ask you whether or not you recall
15 ever seeing this document. 11:18AM

16 A Without reading it, I'm assuming that it's a
17 guidance manual put out to growers that we had.

18 Q Right. It's not a very good copy. I think
19 this was actually produced by a grower by the name
20 of Larry McGarrah. Do you remember that name at 11:19AM
21 all?

22 A I don't.

23 Q This is entitled Environmental Poultry Farm
24 Management. Did you have anything to do with
25 writing the first manual? 11:19AM

1 A Initial manual, I think it was written before
2 my time.

3 Q I believe that's correct, and we'll look at
4 that and see. In fact, I think you testified in the
5 City of Tulsa case you thought it was prepared in
6 1997. Does that sound correct to you or do you
7 know?

11:19AM

8 A I guess if I testified back when I had the
9 knowledge, it was right. I don't --

10 Q Do you have a recollection today who was
11 contributing to the creation of this manual?

11:19AM

12 A Is this the one from '97 or --

13 Q Yes, sir. This is the first one, not the one
14 you got involved in.

15 A Okay.

11:20AM

16 Q Let me ask it this way.

17 A Best I know, Jimmy Mardis was kind of the head
18 person on that. Who else was involved, I don't --

19 Q Was Paul Harriston also involved in it?

20 A He may have been.

11:20AM

21 Q And a gentleman by the name of Couch?

22 A John Couch.

23 Q John Couch?

24 A He may have been involved, too.

25 Q Okay. When you got to Tyson in '99, do you

11:20AM

1 A No, I don't.

2 Q Would you -- so would you agree with this
3 statement: That at some point in time poultry
4 growing was occurring but there were no nutrient
5 management plans in effect for those growers?

11:24AM

6 A I have no clue.

7 Q No clue, all right. In this same manual at
8 the same page where it's talking about -- under the
9 heading phosphorus it says, phosphorus-laden soils,
10 in the second paragraph, can be eroded by rainfall
11 and particles can then be transported into surface
12 water sources. Is that your understanding that's
13 how that occurs?

11:25AM

14 A That can occur, yes.

15 Q Okay, and can that occur even if it has not
16 been an over application of phosphorus to land?

11:25AM

17 MR. BOND: Object to the form.

18 A There is erosion with heavy rains.

19 Q Okay, and when you say that, does that mean
20 that if you land applied poultry waste which
21 contains phosphorus -- let me ask it this way: You
22 know poultry waste contains phosphorus, do you not?

11:26AM

23 A Yes.

24 Q All right, and when you land apply poultry
25 waste, if there is a heavy rain, there's a

11:26AM

1 propensity for runoff; correct?

2 MR. BOND: Object to the form.

3 A If you apply it too close to the rain, you
4 bet.

5 Q Even if you don't apply too close to the rain, 11:26AM
6 you mean in time; is that what you mean by too
7 close?

8 A Yeah, time scale, and that should be in the
9 nutrient management plan as far as time limits of
10 application. 11:26AM

11 Q Okay, and do you know what is the time period
12 which runoff will no longer occur?

13 A I don't. I mean, as far as a direct date, no,
14 or time schedule.

15 Q The last paragraph on this page says, 11:27AM
16 producers shall also implement an annual soil
17 sampling program for application of fields to
18 determine nutrient concentrations and to help
19 calculate application rates. Is that something that
20 Tyson advocated of their contract growers? 11:27AM

21 A I'm sorry. Reread it. I just realized I had
22 my hand in front of my face again.

23 Q All right. Look at the very last paragraph,
24 the first sentence to that. Producers shall also
25 implement annual soil sampling program for 11:27AM